

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-123
Table of Allotments,)	RM-11191
FM Broadcast Stations.)	
(Alturas, California))	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 16, 2005

Released: March 18, 2005

Comment Date: May 9, 2005

Reply Date: May 24, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by George S. Flinn, Jr. ("Flinn"). Flinn proposes the allotment of Channel 277C at Alturas, California, as potentially that community's fourth local service.¹ Flinn states that, should the Commission grant the allotment of Channel 277C at Alturas, he will file the necessary applications and take all necessary actions to construct the facilities for that new station.

2. Flinn represents that the proposed allotment of Channel 277C at Alturas would provide a first service to 42 persons in an area of 1,100 square kilometers, and a second service to 17 persons within an area of 1,350 square kilometers. This proposal warrants consideration because it complies with our technical requirements, would provide a potential first and second reception service, and therefore would serve the public interest.

3. The proposed allotment at Alturas could be made with the site restriction and reference coordinates indicated below. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b), with respect to Alturas, California:

¹ We will consider this proposal separately from the other allotment changes proposed in Flinn's petition for rule making, filed August 27, 2003. The other changes proposed in the petition filed by Flinn, licensee of Station KWCA(FM), Channel 266A, Weaverville, California, involved the upgrade of Channel 266A to Channel 266C3, the reallocation of Channel 266C3 at Palo Cedro, California, and a downgrade of vacant Channel 267C, Alturas, California, to Channel 268C1, Alturas, California. Those allotment changes are under consideration in *Weaverville, Palo Cedro, and Alturas, California*, MB Docket No. 05-125, DA 05-727 (released March 18, 2005).

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
<u>Alturas, California</u>	267C, 293C1, 297C ²	268C1, 277C, 293C1, 297C ³

Proposed Coordinates for Channel 277C at Alturas, California: 41-31-30 NL and 120-19-45 WL, at a site 18.2 km (11.3 miles) east of Alturas.

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the *Appendix* before a channel will be allotted.

5. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,⁴ interested parties may file comments on or before May 9, 2005, and reply comments on or before May 24, 2005, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission. Additionally, a copy of any filing should be served on counsel for Flinn, as follows:

Stephen C. Simpson, Esq.
1090 Vermont Avenue, N.W.
Suite 800
Washington, D.C. 20005

6. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD

² Station KALT-FM, Channel 293C1, is the only local FM station currently providing service at Alturas. Channels 267C and 297C are both vacant allotments.

³ The downgrade of vacant Channel 267C to Channel 268C1 is under consideration in *Weaverville, Palo Cedro, and Alturas, California*, MB Docket No. 05-125, DA 05-727 (released March 18, 2005).

⁴ See 47 C.F.R. §§1.415 and 1.419.

20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁵ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.⁶

8. For further information concerning this proceedings, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. For purposes of these restricted notice and comment rule making proceedings, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the Petitioner constitutes an *ex parte* presentation and shall not be considered in the

⁵ See *Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

⁶ See 44 U.S.C. 3506(c)(4).

proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the Flinns. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents

shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.